

AMENDMENTS TO LB 563

(Amendments to E & R amendments, ER8214)

Introduced by Lathrop, 12.

1 1. Strike the original sections and all amendments
2 thereto and insert the following sections:

3 Section 1. Sections 1 to 12 of this act shall be known
4 and may be cited as the Employee Classification Act.

5 Sec. 2. For purposes of the Employee Classification Act:

6 (1) Commissioner means the Commissioner of Labor;

7 (2) Construction has the same meaning as in section
8 48-2103;

9 (3) Contractor means an individual, partnership, limited
10 liability company, corporation, or other business entity engaged
11 in a delivery service or a construction contractor business,
12 as contractor is defined in section 48-2103, and includes any
13 subcontractor performing services for a contractor;

14 (4) Delivery service means the transport and delivery of
15 goods, products, supplies, or raw materials upon the highways of
16 this state;

17 (5) Department means the Department of Labor; and

18 (6) Performing services means the performance of
19 construction labor or delivery services for remuneration.

20 Sec. 3. (1) An individual performing construction labor
21 services for a contractor is presumed an employee and not an
22 independent contractor for purposes of the Employee Classification

1 Act, unless:

2 (a) The individual meets the criteria found in
3 subdivision (5) of section 48-604;

4 (b) The individual has been registered as a contractor
5 pursuant to the Contractor Registration Act at least six months
6 prior to commencing construction work for the contractor; and

7 (c) The individual has been assigned a combined tax rate
8 pursuant to subdivision (4) of section 48-649 or is exempted from
9 unemployment insurance coverage pursuant to subdivision (6) of
10 section 48-604.

11 (2) An individual performing delivery services for
12 a contractor is presumed an employee and not an independent
13 contractor for purposes of the Employee Classification Act, unless
14 the individual meets the criteria found in subdivision (5) of
15 section 48-604 or is exempted from unemployment insurance coverage
16 pursuant to subdivision (6) of section 48-604.

17 (3) The Employee Classification Act shall not be
18 construed to affect or apply to a common-law or statutory action
19 providing for recovery in tort and shall not be construed to affect
20 or change the common-law interpretation of independent contractor
21 status as it relates to tort liability or a workers' compensation
22 claim. The act shall also not be construed to affect or alter
23 the use of the term independent contractor as interpreted by the
24 Department of Revenue and shall not be construed to affect any
25 action brought pursuant to the Nebraska Revenue Act of 1967.

26 Sec. 4. It is a violation of the Employee Classification
27 Act for a contractor to designate an individual as an independent

1 contractor who would be properly classified as an employee under
2 section 3 of this act.

3 Sec. 5. The department shall establish and operate a
4 hotline and web site for individuals to report suspected violations
5 of the Employee Classification Act. The hotline and web site may
6 be operated in conjunction with the requirements of the Contractor
7 Registration Act. At a minimum, the department shall require
8 the reporting individual to provide contact information and a
9 description of the suspected violation including the name of the
10 business and jobsite location. Except to the extent needed in
11 any administrative hearing, civil action, or criminal proceeding
12 brought to enforce the Employment Security Law, Nebraska Revenue
13 Act of 1967, or Nebraska Workers' Compensation Act, information
14 obtained by the department under this section or obtained from
15 any individual pursuant to the administration of the Employee
16 Classification Act shall be held confidential.

17 Sec. 6. The department shall timely investigate all
18 credible reports made pursuant to section 5 of this act.

19 Sec. 7. In addition to any other fines or penalties
20 provided by law, if the commissioner finds, after notice and
21 hearing, that a contractor has violated the Employee Classification
22 Act, the contractor shall be assessed, by the commissioner, a
23 five-hundred-dollar fine per each misclassified individual for
24 the first offense and a five-thousand-dollar fine per each
25 misclassified individual for each second and subsequent offense.

26 Sec. 8. Upon finding a contractor has violated the
27 Employee Classification Act, the commissioner shall instigate

1 proceedings pursuant to the Employment Security Law to collect
2 any unpaid combined taxes plus interest. The commissioner shall
3 share any violations with the Department of Revenue for analysis
4 of violations of the Nebraska Revenue Act of 1967 and with the
5 Nebraska Workers' Compensation Court. Upon receipt, the Department
6 of Revenue shall promptly investigate and, if appropriate, proceed
7 with the collection of any income tax not withheld plus interest
8 and penalties. The commissioner, Department of Revenue, and
9 Nebraska Workers' Compensation Court shall refer any violation
10 reasonably believed to be a civil or criminal violation of
11 the Employment Security Law, the Nebraska Revenue Act of 1967,
12 the Nebraska Workers' Compensation Act, or another law to the
13 appropriate prosecuting authority for appropriate action.

14 Sec. 9. The department shall annually provide a report to
15 the Legislature regarding compliance with and enforcement of the
16 Employee Classification Act. The report shall include, but not be
17 limited to, the number of reports received from both its hotline
18 and web site, the number of investigated reports, the findings
19 of the reports, the amount of combined tax, interest, and fines
20 collected, the number of referrals to the Department of Revenue,
21 Nebraska Workers' Compensation Court, and appropriate prosecuting
22 authority, and the outcome of such referrals.

23 Sec. 10. Every contractor shall post in a conspicuous
24 place at the job site or place of business in English and Spanish
25 the following notice:

26 (1) Every individual working for a contractor has the
27 right to be properly classified by the contractor as an employee

1 rather than an independent contractor if the individual does not
2 meet the requirements of an independent contractor under the law
3 known as the Employee Classification Act.

4 (2) If you believe you or someone else has not been
5 properly classified as an employee or an independent contractor
6 under the Employee Classification Act, contact the Department of
7 Labor.

8 Sec. 11. Any contract between the state or a political
9 subdivision and a contractor shall require that each contractor who
10 performs construction or delivery service pursuant to the contract
11 submit to the state or political subdivision an affidavit attesting
12 that (1) each individual performing services for such contractor is
13 properly classified under the Employee Classification Act, (2) such
14 contractor has completed a federal I-9 immigration form and has
15 such form on file for each employee performing services, (3) such
16 contractor has complied with section 4-114, (4) such contractor
17 has no reasonable basis to believe that any individual performing
18 services for such contractor is an undocumented worker, and (5) as
19 of the time of the contract, such contractor is not barred from
20 contracting with the state or any political subdivision pursuant
21 to section 12 of this act. Such contract shall also require that
22 the contractor follow the provisions of the Employee Classification
23 Act. A violation of the act by a contractor is grounds for
24 rescission of the contract by the state or political subdivision.

25 Sec. 12. Any contractor who knowingly provides a false
26 affidavit under section 11 of this act to the state or political
27 subdivision shall be subject to the penalties of perjury and upon

1 a second or subsequent violation shall be barred from contracting
2 with the state or any political subdivision for a period of three
3 years after the date of discovery of the falsehood.

4 Sec. 13. Section 48-2115, Revised Statutes Supplement,
5 2009, is amended to read:

6 48-2115 There is hereby created the Contractor
7 Registration Cash Fund to be administered by the department and
8 used to enforce the Contractor Registration Act and the Employee
9 Classification Act. The fund shall consist of such sums as are
10 appropriated to it by the Legislature and any fees collected in the
11 administration of the ~~aet~~ acts that are to be credited to the fund.
12 Any money in the fund available for investment shall be invested
13 by the state investment officer pursuant to the Nebraska Capital
14 Expansion Act and the Nebraska State Funds Investment Act.

15 Sec. 14. Section 77-2711, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 77-2711 (1)(a) The Tax Commissioner shall enforce
18 sections 77-2701.04 to 77-2713 and may prescribe, adopt, and
19 enforce rules and regulations relating to the administration and
20 enforcement of such sections.

21 (b) The Tax Commissioner may prescribe the extent to
22 which any ruling or regulation shall be applied without retroactive
23 effect.

24 (2) The Tax Commissioner may employ accountants,
25 auditors, investigators, assistants, and clerks necessary for the
26 efficient administration of the Nebraska Revenue Act of 1967 and
27 may delegate authority to his or her representatives to conduct

1 hearings, prescribe regulations, or perform any other duties
2 imposed by such act.

3 (3) (a) Every seller, every retailer, and every person
4 storing, using, or otherwise consuming in this state property
5 purchased from a retailer shall keep such records, receipts,
6 invoices, and other pertinent papers in such form as the Tax
7 Commissioner may reasonably require.

8 (b) Every such seller, retailer, or person shall keep
9 such records for not less than three years from the making of such
10 records unless the Tax Commissioner in writing sooner authorized
11 their destruction.

12 (4) The Tax Commissioner or any person authorized in
13 writing by him or her may examine the books, papers, records, and
14 equipment of any person selling property and any person liable for
15 the use tax and may investigate the character of the business of
16 the person in order to verify the accuracy of any return made or,
17 if no return is made by the person, to ascertain and determine
18 the amount required to be paid. In the examination of any person
19 selling property or of any person liable for the use tax, an
20 inquiry shall be made as to the accuracy of the reporting of city
21 sales and use taxes for which the person is liable under the Local
22 Option Revenue Act or sections 13-319, 13-324, and 13-2813 and
23 the accuracy of the allocation made between the various counties,
24 cities, villages, and municipal counties of the tax due. The Tax
25 Commissioner may make or cause to be made copies of resale or
26 exemption certificates and may pay a reasonable amount to the
27 person having custody of the records for providing such copies.

1 (5) The taxpayer shall have the right to keep or store
2 his or her records at a point outside this state and shall make his
3 or her records available to the Tax Commissioner at all times.

4 (6) In administration of the use tax, the Tax
5 Commissioner may require the filing of reports by any person or
6 class of persons having in his, her, or their possession or custody
7 information relating to sales of property, the storage, use, or
8 other consumption of which is subject to the tax. The report shall
9 be filed when the Tax Commissioner requires and shall set forth the
10 names and addresses of purchasers of the property, the sales price
11 of the property, the date of sale, and such other information as
12 the Tax Commissioner may require.

13 (7) It shall be a Class I misdemeanor for the Tax
14 Commissioner or any official or employee of the Tax Commissioner,
15 the State Treasurer, or the Department of Administrative Services
16 to make known in any manner whatever the business affairs,
17 operations, or information obtained by an investigation of records
18 and activities of any retailer or any other person visited
19 or examined in the discharge of official duty or the amount
20 or source of income, profits, losses, expenditures, or any
21 particular thereof, set forth or disclosed in any return, or
22 to permit any return or copy thereof, or any book containing
23 any abstract or particulars thereof to be seen or examined by
24 any person not connected with the Tax Commissioner. Nothing in
25 this section shall be construed to prohibit (a) the delivery to
26 a taxpayer, his or her duly authorized representative, or his
27 or her successors, receivers, trustees, executors, administrators,

1 assignees, or guarantors, if directly interested, of a certified
2 copy of any return or report in connection with his or her tax,
3 (b) the publication of statistics so classified as to prevent
4 the identification of particular reports or returns and the items
5 thereof, (c) the inspection by the Attorney General, other legal
6 representative of the state, or county attorney of the reports
7 or returns of any taxpayer when either (i) information on the
8 reports or returns is considered by the Attorney General to be
9 relevant to any action or proceeding instituted by the taxpayer
10 or against whom an action or proceeding is being considered or
11 has been commenced by any state agency or the county or (ii) the
12 taxpayer has instituted an action to review the tax based thereon
13 or an action or proceeding against the taxpayer for collection of
14 tax or failure to comply with the Nebraska Revenue Act of 1967 is
15 being considered or has been commenced, (d) the furnishing of any
16 information to the United States Government or to states allowing
17 similar privileges to the Tax Commissioner, (e) the disclosure of
18 information and records to a collection agency contracting with the
19 Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)
20 the disclosure to another party to a transaction of information
21 and records concerning the transaction between the taxpayer and
22 the other party, ~~e~~ (g) the disclosure of information pursuant to
23 section 77-27,195 or 77-5731, or (h) the disclosure of information
24 to the Department of Labor necessary for the administration of the
25 Employment Security Law, the Contractor Registration Act, or the
26 Employee Classification Act.

27 (8) Notwithstanding the provisions of subsection (7) of

1 this section, the Tax Commissioner may permit the Postal Inspector
2 of the United States Postal Service or his or her delegates to
3 inspect the reports or returns of any person filed pursuant to the
4 Nebraska Revenue Act of 1967 when information on the reports or
5 returns is relevant to any action or proceeding instituted or being
6 considered by the United States Postal Service against such person
7 for the fraudulent use of the mails to carry and deliver false and
8 fraudulent tax returns to the Tax Commissioner with the intent to
9 defraud the State of Nebraska or to evade the payment of Nebraska
10 state taxes.

11 (9) Notwithstanding the provisions of subsection (7) of
12 this section, the Tax Commissioner may permit other tax officials
13 of this state to inspect the tax returns, reports, and applications
14 filed under sections 77-2701.04 to 77-2713, but such inspection
15 shall be permitted only for purposes of enforcing a tax law and
16 only to the extent and under the conditions prescribed by the rules
17 and regulations of the Tax Commissioner.

18 (10) Notwithstanding the provisions of subsection (7)
19 of this section, the Tax Commissioner may, upon request, provide
20 the county board of any county which has exercised the authority
21 granted by section 81-1254 with a list of the names and addresses
22 of the hotels located within the county for which lodging sales tax
23 returns have been filed or for which lodging sales taxes have been
24 remitted for the county's County Visitors Promotion Fund under the
25 Nebraska Visitors Development Act.

26 The information provided by the Tax Commissioner shall
27 indicate only the names and addresses of the hotels located within

1 the requesting county for which lodging sales tax returns have been
2 filed for a specified period and the fact that lodging sales taxes
3 remitted by or on behalf of the hotel have constituted a portion of
4 the total sum remitted by the state to the county for a specified
5 period under the provisions of the Nebraska Visitors Development
6 Act. No additional information shall be revealed.

7 (11) (a) Notwithstanding the provisions of subsection (7)
8 of this section, the Tax Commissioner shall, upon written request
9 by the Auditor of Public Accounts or the Legislative Performance
10 Audit Committee, make tax returns and tax return information open
11 to inspection by or disclosure to Auditor of Public Accounts or
12 Legislative Performance Audit Section employees for the purpose of
13 and to the extent necessary in making an audit of the Department
14 of Revenue pursuant to section 50-1205 or 84-304. Confidential
15 tax returns and tax return information shall be audited only upon
16 the premises of the Department of Revenue. All audit workpapers
17 pertaining to the audit of the Department of Revenue shall be
18 stored in a secure place in the Department of Revenue.

19 (b) No employee of the Auditor of Public Accounts or
20 Legislative Performance Audit Section shall disclose to any person,
21 other than another Auditor of Public Accounts or Legislative
22 Performance Audit Section employee whose official duties require
23 such disclosure or as provided in subsections (2) and (3) of
24 section 50-1213, any return or return information described in the
25 Nebraska Revenue Act of 1967 in a form which can be associated
26 with or otherwise identify, directly or indirectly, a particular
27 taxpayer.

1 (c) Any person who violates the provisions of this
2 subsection shall be guilty of a Class I misdemeanor. For purposes
3 of this subsection, employee includes a former Auditor of Public
4 Accounts or Legislative Performance Audit Section employee.

5 (12) For purposes of this subsection and subsection (11)
6 of this section:

7 (a) Disclosure means the making known to any person in
8 any manner a tax return or return information;

9 (b) Return information means:

10 (i) A taxpayer's identification number and (A) the
11 nature, source, or amount of his or her income, payments, receipts,
12 deductions, exemptions, credits, assets, liabilities, net worth,
13 tax liability, tax withheld, deficiencies, overassessments, or tax
14 payments, whether the taxpayer's return was, is being, or will be
15 examined or subject to other investigation or processing or (B) any
16 other data received by, recorded by, prepared by, furnished to, or
17 collected by the Tax Commissioner with respect to a return or the
18 determination of the existence or possible existence of liability
19 or the amount of liability of any person for any tax, penalty,
20 interest, fine, forfeiture, or other imposition or offense; and

21 (ii) Any part of any written determination or any
22 background file document relating to such written determination;
23 and

24 (c) Tax return or return means any tax or information
25 return or claim for refund required by, provided for, or permitted
26 under sections 77-2701 to 77-2713 which is filed with the Tax
27 Commissioner by, on behalf of, or with respect to any person

1 and any amendment or supplement thereto, including supporting
2 schedules, attachments, or lists which are supplemental to or part
3 of the filed return.

4 (13) Notwithstanding the provisions of subsection (7) of
5 this section, the Tax Commissioner shall, upon request, provide any
6 municipality which has adopted the local option sales tax under the
7 Local Option Revenue Act with a list of the names and addresses
8 of the retailers which have collected the local option sales tax
9 for the municipality. The request may be made annually and shall
10 be submitted to the Tax Commissioner on or before June 30 of
11 each year. The information provided by the Tax Commissioner shall
12 indicate only the names and addresses of the retailers. The Tax
13 Commissioner may provide additional information to a municipality
14 so long as the information does not include any data detailing
15 the specific revenue, expenses, or operations of any particular
16 business.

17 (14) In all proceedings under the Nebraska Revenue Act
18 of 1967, the Tax Commissioner may act for and on behalf of the
19 people of the State of Nebraska. The Tax Commissioner in his or her
20 discretion may waive all or part of any penalties provided by the
21 provisions of such act or interest on delinquent taxes specified in
22 section 45-104.02, as such rate may from time to time be adjusted.

23 (15)(a) The purpose of this subsection is to set forth
24 the state's policy for the protection of the confidentiality
25 rights of all participants in the system operated pursuant to
26 the streamlined sales and use tax agreement and of the privacy
27 interests of consumers who deal with model 1 sellers.

1 (b) For purposes of this subsection:

2 (i) Anonymous data means information that does not
3 identify a person;

4 (ii) Confidential taxpayer information means all
5 information that is protected under a member state's laws,
6 regulations, and privileges; and

7 (iii) Personally identifiable information means
8 information that identifies a person.

9 (c) The state agrees that a fundamental precept for model
10 1 sellers is to preserve the privacy of consumers by protecting
11 their anonymity. With very limited exceptions, a certified service
12 provider shall perform its tax calculation, remittance, and
13 reporting functions without retaining the personally identifiable
14 information of consumers.

15 (d) The governing board of the member states in the
16 streamlined sales and use tax agreement may certify a certified
17 service provider only if that certified service provider certifies
18 that:

19 (i) Its system has been designed and tested to ensure
20 that the fundamental precept of anonymity is respected;

21 (ii) Personally identifiable information is only used and
22 retained to the extent necessary for the administration of model 1
23 with respect to exempt purchasers;

24 (iii) It provides consumers clear and conspicuous
25 notice of its information practices, including what information
26 it collects, how it collects the information, how it uses the
27 information, how long, if at all, it retains the information, and

1 whether it discloses the information to member states. Such notice
2 shall be satisfied by a written privacy policy statement accessible
3 by the public on the web site of the certified service provider;

4 (iv) Its collection, use, and retention of personally
5 identifiable information is limited to that required by the member
6 states to ensure the validity of exemptions from taxation that are
7 claimed by reason of a consumer's status or the intended use of the
8 goods or services purchased; and

9 (v) It provides adequate technical, physical, and
10 administrative safeguards so as to protect personally identifiable
11 information from unauthorized access and disclosure.

12 (e) The state shall provide public notification to
13 consumers, including exempt purchasers, of the state's practices
14 relating to the collection, use, and retention of personally
15 identifiable information.

16 (f) When any personally identifiable information that
17 has been collected and retained is no longer required for the
18 purposes set forth in subdivision (15)(d)(iv) of this section, such
19 information shall no longer be retained by the member states.

20 (g) When personally identifiable information regarding an
21 individual is retained by or on behalf of the state, it shall
22 provide reasonable access by such individual to his or her own
23 information in the state's possession and a right to correct any
24 inaccurately recorded information.

25 (h) If anyone other than a member state, or a person
26 authorized by that state's law or the agreement, seeks to discover
27 personally identifiable information, the state from whom the

1 information is sought should make a reasonable and timely effort to
2 notify the individual of such request.

3 (i) This privacy policy is subject to enforcement by the
4 Attorney General.

5 (j) All other laws and regulations regarding the
6 collection, use, and maintenance of confidential taxpayer
7 information remain fully applicable and binding. Without
8 limitation, this subsection does not enlarge or limit the state's
9 authority to:

10 (i) Conduct audits or other reviews as provided under the
11 agreement and state law;

12 (ii) Provide records pursuant to the federal Freedom of
13 Information Act, disclosure laws with governmental agencies, or
14 other regulations;

15 (iii) Prevent, consistent with state law, disclosure of
16 confidential taxpayer information;

17 (iv) Prevent, consistent with federal law, disclosure or
18 misuse of federal return information obtained under a disclosure
19 agreement with the Internal Revenue Service; and

20 (v) Collect, disclose, disseminate, or otherwise use
21 anonymous data for governmental purposes.

22 Sec. 15. Section 77-27,119, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 77-27,119 (1) The Tax Commissioner shall administer and
25 enforce the income tax imposed by sections 77-2714 to 77-27,135,
26 and he or she is authorized to conduct hearings, to adopt and
27 promulgate such rules and regulations, and to require such facts

1 and information to be reported as he or she may deem necessary to
2 enforce the income tax provisions of such sections, except that
3 such rules, regulations, and reports shall not be inconsistent with
4 the laws of this state or the laws of the United States. The Tax
5 Commissioner may for enforcement and administrative purposes divide
6 the state into a reasonable number of districts in which branch
7 offices may be maintained.

8 (2) (a) The Tax Commissioner may prescribe the form and
9 contents of any return or other document required to be filed under
10 the income tax provisions. Such return or other document shall
11 be compatible as to form and content with the return or document
12 required by the laws of the United States. The form shall have a
13 place where the taxpayer shall designate the high school district
14 in which he or she lives and the county in which the high school
15 district is headquartered. The Tax Commissioner shall adopt and
16 promulgate such rules and regulations as may be necessary to insure
17 compliance with this requirement.

18 (b) The State Department of Education, with the
19 assistance and cooperation of the Department of Revenue, shall
20 develop a uniform system for numbering all school districts in the
21 state. Such system shall be consistent with the data processing
22 needs of the Department of Revenue and shall be used for the
23 school district identification required by subdivision (a) of this
24 subsection.

25 (c) The proper filing of an income tax return shall
26 consist of the submission of such form as prescribed by the
27 Tax Commissioner or an exact facsimile thereof with sufficient

1 information provided by the taxpayer on the face of the form from
2 which to compute the actual tax liability. Each taxpayer shall
3 include such taxpayer's correct social security number or state
4 identification number and the school district identification number
5 of the school district in which the taxpayer resides on the face of
6 the form. A filing is deemed to occur when the required information
7 is provided.

8 (3) The Tax Commissioner, for the purpose of ascertaining
9 the correctness of any return or other document required to
10 be filed under the income tax provisions, for the purpose of
11 determining corporate income, individual income, and withholding
12 tax due, or for the purpose of making an estimate of taxable income
13 of any person, shall have the power to examine or to cause to have
14 examined, by any agent or representative designated by him or her
15 for that purpose, any books, papers, records, or memoranda bearing
16 upon such matters and may by summons require the attendance of
17 the person responsible for rendering such return or other document
18 or remitting any tax, or any officer or employee of such person,
19 or the attendance of any other person having knowledge in the
20 premises, and may take testimony and require proof material for his
21 or her information, with power to administer oaths or affirmations
22 to such person or persons.

23 (4) The time and place of examination pursuant to this
24 section shall be such time and place as may be fixed by the Tax
25 Commissioner and as are reasonable under the circumstances. In the
26 case of a summons, the date fixed for appearance before the Tax
27 Commissioner shall not be less than twenty days from the time of

1 service of the summons.

2 (5) No taxpayer shall be subjected to unreasonable or
3 unnecessary examinations or investigations.

4 (6) Except in accordance with proper judicial order or
5 as otherwise provided by law, it shall be unlawful for the Tax
6 Commissioner, any officer or employee of the Tax Commissioner,
7 any person engaged or retained by the Tax Commissioner on an
8 independent contract basis, any person who pursuant to this section
9 is permitted to inspect any report or return or to whom a copy, an
10 abstract, or a portion of any report or return is furnished, any
11 employee of the State Treasurer or the Department of Administrative
12 Services, or any other person to divulge, make known, or use in
13 any manner the amount of income or any particulars set forth or
14 disclosed in any report or return required except for the purpose
15 of enforcing sections 77-2714 to 77-27,135. The officers charged
16 with the custody of such reports and returns shall not be required
17 to produce any of them or evidence of anything contained in them
18 in any action or proceeding in any court, except on behalf of the
19 Tax Commissioner in an action or proceeding under the provisions
20 of the tax law to which he or she is a party or on behalf of
21 any party to any action or proceeding under such sections when the
22 reports or facts shown thereby are directly involved in such action
23 or proceeding, in either of which events the court may require the
24 production of, and may admit in evidence, so much of such reports
25 or of the facts shown thereby as are pertinent to the action or
26 proceeding and no more. Nothing in this section shall be construed
27 (a) to prohibit the delivery to a taxpayer, his or her duly

1 authorized representative, or his or her successors, receivers,
2 trustees, personal representatives, administrators, assignees, or
3 guarantors, if directly interested, of a certified copy of any
4 return or report in connection with his or her tax, (b) to
5 prohibit the publication of statistics so classified as to prevent
6 the identification of particular reports or returns and the items
7 thereof, (c) to prohibit the inspection by the Attorney General,
8 other legal representatives of the state, or a county attorney
9 of the report or return of any taxpayer who brings an action to
10 review the tax based thereon, against whom an action or proceeding
11 for collection of tax has been instituted, or against whom an
12 action, proceeding, or prosecution for failure to comply with the
13 Nebraska Revenue Act of 1967 is being considered or has been
14 commenced, (d) to prohibit furnishing to the Nebraska Workers'
15 Compensation Court the names, addresses, and identification numbers
16 of employers, and such information shall be furnished on request
17 of the court, (e) to prohibit the disclosure of information
18 and records to a collection agency contracting with the Tax
19 Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)
20 to prohibit the disclosure of information pursuant to section
21 77-27,195, 77-4110, or 77-5731, (g) to prohibit the disclosure
22 to the Public Employees Retirement Board of the addresses of
23 individuals who are members of the retirement systems administered
24 by the board, and such information shall be furnished to the
25 board solely for purposes of its administration of the retirement
26 systems upon written request, which request shall include the name
27 and social security number of each individual for whom an address

1 is requested, (h) to prohibit the disclosure to the Department
2 of Labor of tax return information pertaining to individuals,
3 corporations, and businesses determined by the Department of Labor
4 to be delinquent in the payment of combined tax or in the repayment
5 of benefit overpayments, and such disclosure shall be strictly
6 limited to information necessary for the administration of the
7 Employment Security Law, to prohibit the disclosure of information
8 to the Department of Labor necessary for the administration of
9 the Employment Security Law, the Contractor Registration Act, or
10 the Employee Classification Act, (i) to prohibit the disclosure
11 to the Department of Motor Vehicles of tax return information
12 pertaining to individuals, corporations, and businesses determined
13 by the Department of Motor Vehicles to be delinquent in the payment
14 of amounts due under agreements pursuant to the International Fuel
15 Tax Agreement Act, and such disclosure shall be strictly limited
16 to information necessary for the administration of the act, or (j)
17 to prohibit the disclosure under section 42-358.08, 43-512.06, or
18 43-3327 to any court-appointed individuals, the county attorney,
19 any authorized attorney, or the Department of Health and Human
20 Services of an absent parent's address, social security number,
21 amount of income, health insurance information, and employer's
22 name and address for the exclusive purpose of establishing and
23 collecting child, spousal, or medical support. Information so
24 obtained shall be used for no other purpose. Any person who
25 violates this subsection shall be guilty of a felony and shall upon
26 conviction thereof be fined not less than one hundred dollars nor
27 more than five hundred dollars, or be imprisoned not more than five

1 years, or be both so fined and imprisoned, in the discretion of
2 the court and shall be assessed the costs of prosecution. If the
3 offender is an officer or employee of the state, he or she shall be
4 dismissed from office and be ineligible to hold any public office
5 in this state for a period of two years thereafter.

6 (7) Reports and returns required to be filed under income
7 tax provisions of sections 77-2714 to 77-27,135 shall be preserved
8 until the Tax Commissioner orders them to be destroyed.

9 (8) Notwithstanding the provisions of subsection (6) of
10 this section, the Tax Commissioner may permit the Secretary of the
11 Treasury of the United States or his or her delegates or the proper
12 officer of any state imposing an income tax, or the authorized
13 representative of either such officer, to inspect the income tax
14 returns of any taxpayer or may furnish to such officer or his or
15 her authorized representative an abstract of the return of income
16 of any taxpayer or supply him or her with information concerning an
17 item of income contained in any return or disclosed by the report
18 of any investigation of the income or return of income of any
19 taxpayer, but such permission shall be granted only if the statutes
20 of the United States or of such other state, as the case may be,
21 grant substantially similar privileges to the Tax Commissioner of
22 this state as the officer charged with the administration of the
23 income tax imposed by sections 77-2714 to 77-27,135.

24 (9) Notwithstanding the provisions of subsection (6) of
25 this section, the Tax Commissioner may permit the Postal Inspector
26 of the United States Postal Service or his or her delegates to
27 inspect the reports or returns of any person filed pursuant to the

1 Nebraska Revenue Act of 1967 when information on the reports or
2 returns is relevant to any action or proceeding instituted or being
3 considered by the United States Postal Service against such person
4 for the fraudulent use of the mails to carry and deliver false and
5 fraudulent tax returns to the Tax Commissioner with the intent to
6 defraud the State of Nebraska or to evade the payment of Nebraska
7 state taxes.

8 (10) (a) Notwithstanding the provisions of subsection (6)
9 of this section, the Tax Commissioner shall, upon written request
10 by the Auditor of Public Accounts or the Legislative Performance
11 Audit Committee, make tax returns and tax return information
12 open to inspection by or disclosure to officers and employees
13 of the Auditor of Public Accounts or Legislative Performance
14 Audit Section employees for the purpose of and to the extent
15 necessary in making an audit of the Department of Revenue pursuant
16 to section 50-1205 or 84-304. The Auditor of Public Accounts
17 or Legislative Performance Audit Section shall statistically and
18 randomly select the tax returns and tax return information to
19 be audited based upon a computer tape provided by the Department
20 of Revenue which contains only total population documents without
21 specific identification of taxpayers. The Tax Commissioner shall
22 have the authority to approve the statistical sampling method used
23 by the Auditor of Public Accounts or Legislative Performance Audit
24 Section. Confidential tax returns and tax return information shall
25 be audited only upon the premises of the Department of Revenue.
26 All audit workpapers pertaining to the audit of the Department of
27 Revenue shall be stored in a secure place in the Department of

1 Revenue.

2 (b) No officer or employee of the Auditor of Public
3 Accounts or Legislative Performance Audit Section employee shall
4 disclose to any person, other than another officer or employee of
5 the Auditor of Public Accounts or Legislative Performance Audit
6 Section employee whose official duties require such disclosure or
7 as provided in subsections (2) and (3) of section 50-1213, any
8 return or return information described in the Nebraska Revenue
9 Act of 1967 in a form which can be associated with or otherwise
10 identify, directly or indirectly, a particular taxpayer.

11 (c) Any person who violates the provisions of this
12 subsection shall be guilty of a Class IV felony and, in the
13 discretion of the court, may be assessed the costs of prosecution.
14 The guilty officer or employee shall be dismissed from employment
15 and be ineligible to hold any position of employment with the State
16 of Nebraska for a period of two years thereafter. For purposes of
17 this subsection, officer or employee shall include a former officer
18 or employee of the Auditor of Public Accounts or former Legislative
19 Performance Audit Section employee.

20 (11) For purposes of subsections (10) through (13) of
21 this section:

22 (a) Tax returns shall mean any tax or information return
23 or claim for refund required by, provided for, or permitted
24 under sections 77-2714 to 77-27,135 which is filed with the Tax
25 Commissioner by, on behalf of, or with respect to any person
26 and any amendment or supplement thereto, including supporting
27 schedules, attachments, or lists which are supplemental to or part

1 of the filed return;

2 (b) Return information shall mean:

3 (i) A taxpayer's identification number and (A) the
4 nature, source, or amount of his or her income, payments, receipts,
5 deductions, exemptions, credits, assets, liabilities, net worth,
6 tax liability, tax withheld, deficiencies, overassessments, or tax
7 payments, whether the taxpayer's return was, is being, or will be
8 examined or subject to other investigation or processing or (B) any
9 other data received by, recorded by, prepared by, furnished to, or
10 collected by the Tax Commissioner with respect to a return or the
11 determination of the existence or possible existence of liability
12 or the amount of liability of any person for any tax, penalty,
13 interest, fine, forfeiture, or other imposition or offense; and

14 (ii) Any part of any written determination or any
15 background file document relating to such written determination;
16 and

17 (c) Disclosures shall mean the making known to any person
18 in any manner a return or return information.

19 (12) The Auditor of Public Accounts or the Legislative
20 Auditor of the Legislative Performance Audit Section shall (a)
21 notify the Tax Commissioner in writing thirty days prior to the
22 beginning of an audit of his or her intent to conduct an audit, (b)
23 provide an audit plan, and (c) provide a list of the tax returns
24 and tax return information identified for inspection during the
25 audit.

26 (13) The Auditor of Public Accounts or the Legislative
27 Performance Audit Section shall, as a condition for receiving tax

1 returns and tax return information: (a) Subject employees involved
2 in the audit to the same confidential information safeguards
3 and disclosure procedures as required of Department of Revenue
4 employees; (b) establish and maintain a permanent system of
5 standardized records with respect to any request for tax returns
6 or tax return information, the reason for such request, and the
7 date of such request and any disclosure of the tax return or
8 tax return information; (c) establish and maintain a secure area
9 or place in the Department of Revenue in which the tax returns,
10 tax return information, or audit workpapers shall be stored; (d)
11 restrict access to the tax returns or tax return information only
12 to persons whose duties or responsibilities require access; (e)
13 provide such other safeguards as the Tax Commissioner determines
14 to be necessary or appropriate to protect the confidentiality of
15 the tax returns or tax return information; (f) provide a report
16 to the Tax Commissioner which describes the procedures established
17 and utilized by the Auditor of Public Accounts or Legislative
18 Performance Audit Section for insuring the confidentiality of tax
19 returns, tax return information, and audit workpapers; and (g) upon
20 completion of use of such returns or tax return information, return
21 to the Tax Commissioner such returns or tax return information,
22 along with any copies.

23 (14) The Tax Commissioner may permit other tax officials
24 of this state to inspect the tax returns and reports filed
25 under sections 77-2714 to 77-27,135, but such inspection shall be
26 permitted only for purposes of enforcing a tax law and only to
27 the extent and under the conditions prescribed by the rules and

1 regulations of the Tax Commissioner.

2 (15) The Tax Commissioner shall compile the school
3 district information required by subsection (2) of this section.
4 Insofar as it is possible, such compilation shall include, but
5 not be limited to, the total adjusted gross income of each school
6 district in the state. The Tax Commissioner shall adopt and
7 promulgate such rules and regulations as may be necessary to insure
8 that such compilation does not violate the confidentiality of any
9 individual income tax return nor conflict with any other provisions
10 of state or federal law.

11 Sec. 16. Original sections 77-2711 and 77-27,119, Reissue
12 Revised Statutes of Nebraska, and section 48-2115, Revised Statutes
13 Supplement, 2009, are repealed.